IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5970 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMESH @ BABMAIYA MANILAL SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DATTA AMICUS CURIE (THROUGH JAIL) for Petitioner

MR KT DATE Astt. Govt. Pleader for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

#. Heard Ms.Banna Datta, learned advocate appearing as amicus curiae appointed by the Court as the petition has been moved through the Jail by the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 12-4-99 passed by respondent No.2 - the Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged in the present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, and the same is produced on record by learned AGP interalia indicates that 4 prohibition cases were registered against the petitioner at Gomatipur police station and in each of the cases country made liquor was seized from the possession of the petitioner. The grounds further indicate that out of 4 cases, 3 cases were pending for trial in the court while the case registered vide C.R.No : 573 of 1999 dated 11-4-1999 was pending investigation and the petitioner / detenu was in judicial custody. The grounds of detention further indicates that two witnesses on assurance of their anonymity have given statement dated 26-3-99 and 1-4-1999 in respect to alleged anti social activities of the petitioner. That on the basis of the above stated material, the Commissioner of Police - Respondent No.2 as detaining authority has come to the conclusion that the petitioner is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that the detaining authority while passing the impugned order has failed to consider the less drastic remedy like cancellation of bail. That on the date of passing of the order, the petitioner / detenu was in judicial custody as noted by the detaining authority and as such, there is non application of mind which has vitiated the subjective satisfaction rendering the detention order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal

No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case also, the grounds of detention suggest that though the detaining authority was aware of the fact that the petitioner / detenu was in judicial custody and was released on bail in previous 3 cases registered against him on 25-5-98, 24-6-98 and 24-7-98, nothing is stated in the grounds as to why less drastic remedy has not been resorted to by claiming cancellation of bail in other matters. Under these circumstances, I am constrained to hold that such non application of mind has vitiated the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 12-4-99 passed by respondent No.2 against the petitioner is hereby quashed and set aside. The petitioner - UMESH BABMAIYA MANILAL SOLANKI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 11-1-2000 [A.K.Trivedi, J.]

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